

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of new)	NOTICE OF ADOPTION,
Rules I through XXIX and amendment)	AMENDMENT, AND REPEAL
of ARM 37.95.102, 37.95.106,)	
37.95.108, 37.95.121, 37.95.132,)	
37.95.139, 37.95.140, 37.95.141,)	
37.95.214, 37.95.215, 37.95.225,)	
37.95.602, 37.95.610, 37.95.611,)	
37.95.613, 37.95.702, 37.95.705,)	
37.95.706, 37.95.708, and 37.95.1005)	
and the repeal of ARM 37.95.109,)	
37.95.618, 37.95.620, 37.95.701, and)	
37.95.907 pertaining to licensure of day)	
care facilities)	

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-366 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 2572 of the 2005 Montana Administrative Register, issue number 24, and, on January 26, 2006, published MAR Notice No. 37-368 pertaining to the amended notice of proposed adoption, amendment, and repeal of the above-stated rules, at page 201 of the 2006 Montana Administrative Register, issue number 2.

2. The department has adopted new rules I (37.95.145), III (37.95.171), IV (37.95.156), VI (37.95.161), VII (37.95.154), XI (37.95.155), XIII (37.95.153), XIV (37.95.149), XV (37.95.150), XVIII (37.95.181), XIX (37.95.182), XXII (37.95.173), XXIII (37.95.174), XXIV (37.95.168), XXV (37.95.172), XXVI (37.95.175), and XXIX (37.95.166) as proposed. The department is not adopting rules XVII and XX.

3. The department has amended ARM 37.95.108, 37.95.139, 37.95.140, 37.95.141, 37.95.214, 37.95.215, 37.95.225, 37.95.702, 37.95.705, 37.95.706, and 37.95.708 as proposed.

4. The department has repealed ARM 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 as proposed.

5. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.95.160) DAY CARE FACILITIES: STAFF RECORDS

(1) The provider shall maintain ~~written~~ records regarding each care-giver

which include:

- (a) a record of training and verifiable experience;
- (b) through (d) remain as proposed.

(2) The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-732, MCA

RULE V (37.95.703) GROUP AND FAMILY DAY CARE HOMES:

PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) through (1)(e) remain as proposed.

(2) The provider and all staff, including care_givers, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered care_givers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. ~~Pursuant to ARM 37.95.109(8),~~ The director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the care-giver providing care.

(3) The provider, or an approved care-giver designated by the provider, shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities.

(4) remains as proposed.

(5) Orientation training does not count toward the required eight hours of ~~continuing~~ approved education or training education as specified in (6).

(6) The provider and all care_givers must annually verify that they have met the training requirements set out in ARM 37.95.162.

(7) The provider must hold current course completion cards in CPR for infant, child, and adult CPR; infant choking response; and standard first aid ~~(1st aid)~~. Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

RULE VIII (37.95.162) DAY CARE FACILITIES: REQUIRED ANNUAL

TRAINING (1) The provider and all care_givers at any day care facility must each verify that they have successfully completed a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date.

(2) The training may be obtained from the department or other department approved professional child care education and development programs offered by: (a) by national, state, or local child care organizations; (b) by institutions of higher education that are regionally accredited; or (c) through the successful completion of college level course work in early childhood areas or child development.

(3) ~~Continuing education~~ Approved education and training must relate to the Montana ~~Early Care and Education Knowledge Base~~ and must fall within the following categories:

(a) through (k) remain as proposed.

(4) With the exception of volunteers, any person who provides care to children in a day care facility for at least 160 hours a year is required to successfully complete eight hours of continuing approved education or training annually.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

RULE IX (37.95.176) DAY CARE FACILITIES: NEGATIVE LICENSING

ACTION (1) After written notice to the applicant, licensee, or registrant, the department shall deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a registration certificate or license upon finding that:

(a) and (b) remain as proposed.

(c) the applicant, licensee, ~~or~~ registrant, ~~or a member of the applicant's, licensee's, or registrant's household~~ has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

(d) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, after written notice to the applicant, licensee, or registrant may deny, suspend, or revoke a registration certificate license or registration certification or may restrict or reduce to a provisional, or probationary status a registration certificate license or registration certification upon a finding that:

(a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) through (l) remain as proposed.

(3) remains as proposed.

(4) If a licensee is placed on a probationary or other provisional status, the department ~~may~~ shall notify all parents and guardians of all children attending the

facility of the status of the license, the basis for the reduced status and the time period for which the license is reduced. The department may do so by personal notice, by written notice, or by posting notice on the day care license, which is required to be posted in plain view at the facility.

(5) If a license or registration certificate has been denied to an applicant, or negative licensing action is proposed against a license or registration certificate based upon a conviction identified in (1)(a) through (d) or (2)(a), and the applicant, licensee, or registrant requests a fair hearing and establishes by clear and convincing evidence that the convicted person has been sufficiently rehabilitated to warrant the public trust, the department may issue the license or registration certificate or may withdraw the proposed negative licensing action.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

RULE X (37.95.623) DAY CARE CENTERS: CHILD-TO-STAFF RATIOS

(1) The child-to-staff ratio for a day care center is:

(a) through (d) remain as proposed.

~~(2) For day care center programs providing care exclusively to school aged children, the child to staff ratio is 14:2 for the first 28 children, with a ratio of 14:1 to be maintained for numbers in excess of 28.~~

~~(3) (2) Only the provider day care center director, primary care-givers, and aides may be counted as staff in when determining the staff ratio.~~

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

RULE XII (37.95.146) DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE (1) and (2) remain as proposed.

(3) Upon discontinuance of the operation or upon transfer of ownership of the facility, the license or registration certificate must be physically returned to the department within ten working days.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

RULE XVI (37.95.622) DAY CARE CENTERS: STAFFING QUALIFICATIONS (1) through (1)(d) remain as proposed.

~~(2) Each day care center must have an on-site director who can be either a teaching or nonteaching director.~~

~~(3) Any on-site teaching director newly employed at any day care center on or after the effective date of this rule shall have:~~

~~(a) a current child development associate (CDA) credential; or~~

~~(b) child care development specialist (CCDS) apprenticeship certificate; or~~

~~(c) an associate's or bachelor's degree in early childhood education/child development; or~~

~~(d) a degree in education or social science with at least 20 credits in early~~

childhood education/child development; or

~~(e) an associate's or bachelor's degree in an unrelated field with at least 20 semester credits in early childhood education/child development and 1000 hours of documented experience in an early childhood program, such as a day care center, a family or group day care home, head start, or another recognized preschool program.~~

~~(4) An administrative nonteaching director newly employed at any day care center on or after the effective date of the rule must have an associate's or bachelor's degree in accounting, business administration, finance, human service/public administration, or a similar field; and~~

~~(a) 4000 hours (two years) of experience working in an early childhood program such as a day care center, a family or group day care home, head start, or recognized preschool program; or~~

~~(b) the director must be employed in a day care center that also employs an education coordinator/program director who qualifies as a primary caregiver and who oversees curriculum and program components.~~

~~(5) A center director, newly employed at any day care center on or after the effective date of these rules, whether teaching or nonteaching, must qualify for a level three or higher on the Montana early care and education career path and must obtain 15 hours of approved training on an annual basis.~~

(2) A center director must obtain 15 hours of approved education or training on an annual basis.

~~(6) through (6)(g) remain as proposed but are renumbered (3) through (3)(g).~~

~~(7) (4) Course completion as indicated in (6)(3)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

~~(8) (5) An aide must be directly supervised by a primary care-giver and shall be at least 16 years of age and must:~~

~~(a) through (b) remain as proposed.~~

~~(c) successfully complete a minimum of at least eight hours of documented verified continuing education or training annually as required in ARM 37.95.162.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

RULE XXI (37.95.165) DAY CARE CENTERS, FACILITIES: SCHOOL-AGED CARE: NOTICE OF CURRENT ADDRESS (1) remains as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

RULE XXVII (37.95.184) DAY CARE FACILITIES: HEALTH HABITS

(1) Good health habits, such as washing hands, must be taught during everyday activities. The care-givers must ensure that each child washes his hands:

~~(a) upon arriving at the facility;~~

~~(b) (a) before eating;~~

~~(c) (b) before participating in food preparation activities; and~~

- ~~(d)~~ (c) after using the toilet.
- (2) Every employee, volunteer, or resident at a day care facility must:
 - (a) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person exhibits any of the symptoms outlined in ~~(4)~~ ARM 37.95.139(4) for which a child would be excluded;
 - (b) through (c) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE XXVIII (37.95.183) DAY CARE FACILITIES: FIRST AID REQUIREMENTS (1) Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American ~~Red~~ eCross. These policies must include but are not limited to:

- (a) procedures for handling medical emergencies, including calling the emergency Montana ~~p~~Poison ~~e~~Control ~~e~~Center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and
- (b) remains as proposed.
- (2) A first aid kit must be kept on site at all times and must at a minimum contain:
 - (a) unexpired syrup of ipecac (one ounce bottle) which may be administered only upon directive from the ~~e~~Emergency Montana ~~p~~Poison ~~e~~Control ~~e~~Center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);
 - (b) through (e) remain as proposed.
 - (f) the toll free number for the ~~e~~Emergency Montana ~~p~~Poison ~~e~~Control ~~e~~Center, 1 (800) 222-1222;
 - (g) and (h) remain as proposed.
 - ~~(i) each day care provider is responsible for notifying the department of any hazard to the health, welfare, or safety of children in care.~~
 - (3) each day care provider is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care.
- (3) through (5) remain as proposed but are renumbered (4) through (6).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

6. The department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.95.102 DEFINITIONS (1) "Aide" means a facility staff person who carries out assigned care-giving tasks under the direct supervision of a primary care-giver or director.

- (2) "Care-giver" means a licensee, registrant, employee, aide, or volunteer

who is responsible for the direct care and supervision of children in a day care facility.

(3) through (23) remain as proposed.

(24) "Nonprovider staff" means a staff person of a day care facility who does not participate in a care-giving role.

(25) through (46) remain as proposed.

~~(47) "School age child care facility" means a licensed day care center program operating in a facility other than a private residence that exclusively provides care for school aged children when public school is not in session.~~

(48) remains as proposed but is renumbered (47).

~~(49)~~ (48) "Supervision" means the provider and all care-givers shall be able to see or hear the children at all times.

(50) remains as proposed but is renumbered (49).

~~(51) "Teaching director" means a person who meets the requirements outlined in [Rule XVI] and who regularly provides direct care to the children who attend the day care facility.~~

(52) through (55) remain as proposed but are renumbered (50) through (53).

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.106 DAY CARE FACILITIES, REGISTRATION, OR LICENSING APPLICATION (1) through (2) remain as proposed.

(3) Before a regular one year license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) through (e) remain as proposed.

(f) a DPHHS personal statement of health for licensure form for each care-giver, aide, or volunteer who has direct contact with the children in care;

(g) a criminal background and child and adult protective services check on the provider or staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) list of current staff with ages, addresses, and telephone numbers; each staff person's legal name, position, age, residential and mailing addresses, and telephone numbers;

(i) through (j) remain as proposed.

(4) Before a regular one year registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a DPHHS personal statement of health form for each care-giver, aide, or volunteer who has direct contact with the children in care;

(b) remains as proposed.

(c) a criminal background and child and adult protective services check on the provider or staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services

being provided by an individual covered by this requirement;
(d) through (7) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.121 SAFETY REQUIREMENTS (1) through (10) remain as proposed.

(11) The ~~e~~Emergency Montana ~~p~~Poison ~~e~~Control ~~e~~Center number, 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.

(12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surface is prohibited.

(13) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

(a) remains as proposed.

(b) If the day care provider chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from ~~eloping~~ escaping, the facility shall have no lock or fastening device which prevents free escape from the interior.

(c) through (f) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 52-2-735, MCA

37.95.132 TRANSPORTATION (1) The provider shall obtain written consent from the parents for any transportation provided.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid Montana driver's license.

~~(a) In day care facilities providing care for school aged children, persons responsible for transportation of children must also possess current CPR and first aid certifications.~~

~~(b) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with national highway transportation safety administration recommendations.~~

(3) remains as proposed.

(4) With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have a his safety restraint. Children shall not share a safety seat or a safety restraint.

(5) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with National Highway Transportation Safety Administration recommendations.

(5) and (6) remain as proposed but are renumbered (6) and (7).

~~(7)~~ (8) Facilities providing transportation for children under six years of age or

children six years of age but weighing less than 60 pounds shall comply with the following requirements:

(a) all vehicles shall be equipped with children's car seats or booster seats that meet federal ~~d~~Department of ~~t~~Transportation recommendations for the age and weight of the child being transported;

(b) through (e) remain as proposed.

~~(8)~~ (9) No child shall be left unattended in a vehicle.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

37.95.602 DAY CARE CENTERS, PROGRAM REQUIREMENTS (1) The program conducted in a day care center shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth, and well being. Both active and passive learning experiences shall be provided under direct adult supervision.

(2) ~~(a) This requirement~~ The requirement in (1) shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program, and confirms the program is based upon the criteria below:

(i) and (ii) remain as proposed but are renumbered (a) and (b).

~~(iii) (c)~~ (c) the center provides age developmentally appropriate opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of the child's own clothing, and assisting in planning activities;

~~(iv) (d)~~ (d) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. Care-givers are required to secure a release from parents before children are taken on field trips;

(v) and (vi) remain as proposed but are renumbered (e) and (f).

~~(b) Only (1)(a)(ii) through (iv) are applicable to programs offered by a day care facility exclusively serving school aged children.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.610 DAY CARE CENTERS, SPACE (1) through (2) remain as proposed.

(3) In facilities licensed after ~~the effective date~~ June 2, 2006 of this rule, this requirement shall be deemed to have been satisfied if each designated area for children's activities contains a minimum of 35 square feet of usable floor space per child that will be in the room at any one time, as calculated in (2). ~~When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for periods when children are using their rest equipment. During sleep periods, the space shall be sufficient to provide spacing between children using sleep equipment.~~

(4) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for:

(a) periods when children are using their rest equipment; or

(b) when large group activities, such as educational assemblies, occur.

(5) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.

(5) through (7)(c) remain as proposed but are renumbered (6) through (8)(c).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

(1) through (2)(f) remain as proposed.

~~(3) Day care centers providing care only for school aged children must have appropriate size furniture and supplies to fit the needs of children in care. However, a meeting room/conference room may be used if needed as a private/confidential place for communications between parents/staff/children.~~

~~(a) A kitchen or clean sanitized food preparation area must be approved by the local health department.~~

~~(b) A convenient, comfortable rest area must be made available for staff who work full days. If no staff area exists, staff must be allowed to leave the facility for a lunch break. The child to staff ratio set in ARM 37.95.620(10) through (11)(a) must be maintained at all times.~~

~~(c) Storage for extra equipment/supplies must be in a location easily accessible to staff. Equipment/supplies must be rotated at various times throughout the year to provide for a variety of play and learning experiences. Facilities may arrange to bring supplies that are purchased on a monthly/weekly basis to the site at a time that will not disrupt staff or children at the site.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

(1) through (5) remain as proposed.

(6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the ~~e~~Emergency ~~m~~Montana ~~p~~Poison ~~e~~Control ~~e~~Center (1 (800) 222-1222) must be posted by each telephone.

~~(7) Center programs that exclusively serve school aged children are exempt from (1)(a), (1)(b), and (2). All other provisions of this rule remain applicable to such programs.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING

(1) through (4) remain as proposed.

(5) Cribs, cots, or mats shall be spaced to allow for easy access to each

child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied. ~~No child or infant shall be placed in a stackable crib.~~ The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.

(6) through (8) remain as proposed.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

7. The department has corrected a reference in Rule XXVII (37.95.184). There was an internal reference in (2)(a) to (4) in the rule, which did not exist. The reference is being corrected to refer to ARM 37.95.139(4) which is the correct reference.

The department on its own initiative has removed ARM 37.95.613(7) based on comments received on other rules pertaining to school aged child care. Further explanation is in the comment section of this notice pertaining to ARM 37.95.613.

8. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The department should change all references of "day care" to "child care".

RESPONSE: The department disagrees. The Montana Child Care Act at Title 52, Chapter 2, part 7, MCA, uses the term "day care" predominately, even though both child care and day care terms can be used interchangeably as stated in 52-2-703, MCA. The provider may use the term child care. However, in order to be consistent with statutory language, the department will continue to use the day care term.

COMMENT #2: There were three individuals who commented that insufficient notice was given to providers.

RESPONSE: The department disagrees. As is legally required, the department sent its rule notices to all people who are listed on the department's interested parties list. Additionally, the department sent post cards to all licensed and registered providers informing them of the proposed rule changes with information on how to access the document via the Internet, or by request to the department for a printed copy. Further, the department sent notices to each Child Care Resource and Referral Agency with a request that this information be included in the newsletters sent out by those agencies. Lastly, the department had its Early Childhood Services Bureau enclose the notices of the proposed rule changes with the state assisted payment checks mailed to providers.

COMMENT #3: If a child care center is sold, will it be required under the new rules to upgrade to the new rule requirements or will it be allowed to operate within the existing rules?

RESPONSE: If an existing child care center is sold, then the upgrades as specified at ARM 37.95.610 would be required. The center would be considered a new facility under new management.

COMMENT #4: When the department is requiring outside equipment to be anchored, is the department referring to Little Tykes equipment which is meant to be portable?

RESPONSE: Most Little Tykes equipment is made to use water as its anchor, and the manufacturer lists restrictions on the equipment's use based on the child's weight so that the equipment will not tip and cause injury. If the manufacturer's recommendations are followed, further anchoring is not necessary.

COMMENT #5: According to the proposed rule, the department is eliminating the requirement for care-giving staff to have a TB test. Why? TB is more prominent now than it was ten years ago.

RESPONSE: The department disagrees. TB is not more prominent in Montana, and the incidence of TB has dramatically decreased over the last ten years. The department's Communicable Disease Control and Prevention Bureau and the U.S. Centers for Disease Control and Prevention no longer recommend annual TB testing. However, prescreening of new employees and follow-up screening of at-risk groups is not prohibited by the rule. These procedures can still be accomplished by the facility.

COMMENT #6: Please show the study which indicates that overcrowding is associated with upper respiratory infections.

RESPONSE: A study has been conducted and is supported by the American Academy of Pediatrics, the American Public Health Association, and the U.S. Department of Health and Human Services. The information can be found in Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs, Second Edition, Chapter 5. This publication is a joint effort produced by all of these health associations. The document was published in 2002 by the American Academy Pediatrics, ISBN #1-58110-074-5. A copy of the report is available for viewing at the department's Child Care Licensing Program's central office at 2401 Colonial Drive, Helena, Montana.

COMMENT #7: Will existing child care facilities or programs be grandfathered in, or will they have to make the appropriate changes specified in these rules?

RESPONSE: Under the proposed rules, existing child care facilities would be grandfathered in until the facility is sold or ownership is transferred.

COMMENT #8: When will these rules go into effect?

RESPONSE: The rules become effective the day after the notice of adoption (meaning this notice) is published by the Montana Secretary of State in the Montana Administrative Register.

COMMENT #9: I operate a child care center that provides care for 2 through 12 year olds in three different locations. One consists of 2 to 5 year olds, one has kindergarten and 1st and 2nd graders, and one has 3rd through 6th graders. Is my operation considered exclusively as a school-aged program? All three of these locations fall under one license. Would this change?

RESPONSE: If the individual programs are in three separate locations in separate structures, then three separate licenses are issued. The programs caring for 1st through 6th graders would certainly qualify as a school-aged program.

COMMENT #10: What is a recognized preschool program?

RESPONSE: A preschool is a program that meets the statutory definitions found at 52-2-703(4)(b), MCA, and 20-5-402, MCA. The statutory definitions are restricted to a facility that cares for children 3 to 5 years of age, has a structured educational curriculum, and limits preschool hours to three hours per day for children under 5 years of age, or up to five hours per day for 5 year olds.

RULE I (37.95.145) DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES

COMMENT #11: In outlining its renewal procedures in Rule I, the department did not provide for an extension of renewal for extenuating circumstances such as the death of a family member.

RESPONSE: The department disagrees. Rule I(2) (37.95.145) clearly states: "If a provider is unable to fulfill all aspects of the renewal process due to circumstances beyond the provider's control such as a personal crisis involving the death of an immediate family member, a major medical emergency, or other good cause shown, the department may grant the provider a three month 'provisional' registration. All licensing requirements for renewal must be completed by the end of the provisional period or the license will lapse."

COMMENT #12: Rule I(2) (37.95.145) is vague with respect to the words, "or other good cause shown".

RESPONSE: The department concurs that the particular wording is vague. However, the department cannot absolutely anticipate all situations that may affect the ability of a provider to renew timely. The rule language allows for those unanticipated circumstances.

COMMENT #13: The words "if applicable" should be added at the end of the sentence in Rule I(2) (37.95.145).

RESPONSE: The department disagrees with the comment to add "if applicable". The condition of the rule's applicability is implied.

COMMENT #14: Rule I(5) (37.95.145) addresses the process for reapplication once a provider license is terminated for failure to renew timely. The department should exempt the applicant from having to attend the new provider orientation.

RESPONSE: The department disagrees. If providers fail to renew their license or registration in a timely fashion, the provider's license or registration is terminated. When reapplying for license or registration, the providers are considered to be new providers subject to the same process and requirements as first time providers.

RULE II (37.95.160) DAY CARE FACILITIES: STAFF RECORDS

COMMENT #15: The department should omit the word "written" when referring to records as specified in Rule II(1) (37.95.160). Training records are rarely written but are mostly electronic due to the training through the Training Approval System by the Early Childhood Project Career Development Program.

RESPONSE: The department agrees and will strike the word "written" in Rule II(1) (37.95.160).

COMMENT #16: The following language should be added to Rule II(1)(a) (37.95.160): a record of approved continuing education/training through the Training Approval System administered by the Early Childhood Project Career Development Program and verifiable experience.

RESPONSE: The department partially agrees. The department does agree that experience should be verifiable and will add the words "verifiable experience" to Rule II(1)(a) (37.95.160). While the department understands the reasons for the comment, there are real circumstances where care-giver training is outside of the accepted Training Approval System. For example, a care-giver may have received training outside of the state of Montana but is applying to become a care-giver, primary care-giver, or director in Montana. The department would not be able to approve the training for this person which would prohibit the person's employment.

COMMENT #17: Rule II (37.95.160) should contain a provision on keeping staff records that contain information on each staff person's legal name, residential and mailing addresses, phone number, job position, and age.

RESPONSE: The department agrees and will add the following words as (2): "The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers."

RULE IV (37.95.156) DAY CARE FACILITIES: CONFIDENTIALITY REQUIREMENTS

COMMENT #18: Do the confidentiality requirements in Rule II (37.95.156) apply to master lists of parents which include the parent names and phone numbers?

RESPONSE: Yes. The requirements of Rule IV (37.95.156) specify that any information about the child and his family is not to be disclosed to another family. Confidentiality must be maintained. ARM 37.95.141(2) requires providers to maintain a master list and have it readily accessible to the department upon request. Any master list information which is in the department's possession remains confidential. The master list shall not be made available, nor should it be easily accessible, to other parents whose children are enrolled.

RULE V (37.95.703) GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS

COMMENT #19: Rule V(1)(e) (37.95.703) specifies that providers must demonstrate they are of "good moral character". Please define this term.

RESPONSE: The Montana Supreme Court has found that "good moral character" means "a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation." Since the definition is defined in law, it is not necessary to define it in rule.

COMMENT #20: Rule V(2) (37.95.703) gives 15 days for a provider to submit materials necessary for staff approval. This is not enough time.

RESPONSE: The department disagrees. The current rule has specified that the documentation for approving care-givers must be submitted to the department within a "reasonable time". The department has long interpreted "reasonable time" as being 15 working days by policy. Providers have not found it difficult to submit the necessary information within that period of time.

COMMENT #21: Regarding Rule V(2) (37.95.703), please explain who has the supervisory responsibility for staff members while waiting for staff members' approval status.

RESPONSE: Rule V(2) (37.95.703) is specific to group and family day care homes. Supervisory responsibility lies with the registrant and any other approved care-givers for that facility.

COMMENT #22: Rule V(3) (37.95.703) specifies that the provider shall be responsible for direct care, supervision, and guidance of the children. Does that mean that the provider must be onsite at all times?

RESPONSE: Yes. By definition, a provider is defined as "the applicant for license or registration, the licensee or registrant". The department considers the person

holding the registration certificate to be the provider. Under Rule V(3) (37.95.703), the provider would be required to be onsite at all times.

The department understands that there are times when the provider must be away from the facility and the approved care-givers are left to provide day care services to the children. The department will amend the language in Rule V(3) (37.95.703) to read: "The provider, or an approved care-giver designated by the provider, shall...", thus allowing the provider to be off the premises without violating the rules.

COMMENT #23: In Rule V(5) (37.95.703), do the requirements of orientation apply to day care center staff, or only to home care-givers?

RESPONSE: The Rule V(5) (37.95.703) requirements on orientation training pertain only to family and group home providers. It is not required, and would not be appropriate, for day care center staff.

COMMENT #24: In Rule V(5) (37.95.703), please substitute "approved education/training" instead of using the term "continuing education".

RESPONSE: The department agrees and will strike the words "continuing education" and will add the words "approved education or training" as suggested.

COMMENT #25: Please add the phrase, "equivalent to the American Red Cross" to the end of Rule V(7) (37.95.703).

RESPONSE: The department disagrees. The American Red Cross is not the only source of CPR and first aid training. There are other entities such as the American Heart Association that provide CPR and first aid training, and not all of these entities use the same training techniques or mechanisms employed by the American Red Cross. To be acceptable, the department requires the CPR and first aid training programs to show that they have national recognition, issue completion and certification documentation, and have completion criteria based upon direct and practical instruction.

RULE VI (37.95.161) DAY CARE FACILITIES: CRIMINAL BACKGROUND CHECKS

COMMENT #26: Rule VI(1) (37.95.161) specifically pertains to the requirement that volunteers have criminal background checks. It is burdensome and restrictive to have such checks conducted on persons who are coming into the facility for brief presentations or providing an inside field trip for the children.

RESPONSE: In Rule VI(1)(a) (37.95.161), the department is not referring to the occasional guest presenter that would be in the facility conducting a presentation for the children. The department is aware that many facilities have volunteers provide care-giving services to the facility without compensation. The volunteer care-giving staff, although not paid, are considered by the department as direct care-giving staff.

All direct care staff are subject to proper background checks.

COMMENT #27: Comments were received with regard to the requirement that all care-givers must have motor vehicle background checks conducted as part of the approval process. The commentators requested that the department limit this requirement to only those persons providing transportation services.

RESPONSE: The rule requires all care-giving staff to have the motor vehicle check unless they do not possess a driver's license and do not drive a vehicle. The motor vehicle check may disclose repeated convictions of serious driving offenses such as DUI, which may be inconsistent with the good moral character requirements for day care staff.

COMMENT #28: If a fingerprint check is conducted as required in Rule VI(3) (37.95.161), does the provider still have to submit a request for a criminal check for each state where the potential employee has lived?

RESPONSE: No. A fingerprint card allows for an FBI criminal history check through the Criminal Justice Information Network. The FBI database contains information for all 50 states, thus eliminating the need to do a state-by-state check.

COMMENT #29: In Rule VI(4) (37.95.161), are background checks only conducted back to the age of 18?

RESPONSE: Yes. A person is considered an adult at the age of 18, and any criminal history occurring as an adult is stored within the Criminal Justice Information Network database.

COMMENT #30: The department should not allow the use of an affidavit to verify criminal history, as stated in Rule VI(5) (37.95.161).

RESPONSE: The department disagrees. There are some people who, due to age or medical conditions, do not have sufficient ridges on their fingers to produce readable fingerprints. In these cases, the department is not able to obtain criminal background check results from the fingerprint process. The department can conduct a name-based check on the Criminal Justice Information Network. An affidavit can be used while waiting for those results. The affidavit is a supplemental document, and it would not supplant the acquisition of actual background check results.

COMMENT #31: Under Rule VI(5) (37.95.161), can the care-giver work in the facility while waiting for background results?

RESPONSE: Yes, however, such an employee must be directly supervised and not be alone with any of the children until the results of the background check are known.

COMMENT #32: Should Rule VI(5) (37.95.161) be considered a department policy

and not a rule?

RESPONSE: The department feels it is necessary to have the requirements in the form of a rule so that it may exercise enforcement as necessary and appropriate.

COMMENT #33: When requiring an out-of-state background check as required in Rule VI(6) (37.95.161), must the five years lived out-of-state be consecutive years?

RESPONSE: No. If the person has lived in another state at any time during the previous five years, then an out-of-state background check must be conducted. It does not have to be for a period of five consecutive years.

RULE VIII (37.95.162) DAY CARE FACILITIES: REQUIRED ANNUAL TRAINING

COMMENT #34: In Rule VIII(1) (37.95.162), please raise the number of care-giver training hours from eight hours to 12 hours for all care-givers.

RESPONSE: The department disagrees. The department purposefully elected not to revise the overall training for day care providers but instead chose to increase training hours incrementally, beginning with center directors. The department's position is that with the exception of the requirements for center directors, the current training requirement is adequate and meets the intent of the rule established in 2000. Further, the department determined that the need for increased regulations involving health and safety was a higher priority than increasing the overall training hours. In choosing which rules to propose for change, the health and safety factors outweighed any justification for increasing the overall training requirement.

COMMENT #35: In Rule VIII(2) (37.95.162), the department should require that all training be obtained through any Early Childhood Project approved by local, state, or national sponsors, or institutions of higher education that are regionally accredited through the established state processes.

RESPONSE: The department partially agrees. The department will amend Rule VIII(2) (37.95.162) to read that training is to be obtained through any approved local, state or national sponsors or institutions of higher education that are regionally accredited through the established state processes. The department did not specifically list Early Childhood Project because if for some unknown reason the department's contract with Early Childhood Project ended, the department would be unable to gain training approval through any other source, including itself, without changing the rule.

COMMENT #36: Rule VIII(3) (37.95.162) should include the words "approved" in front of "continuing education", and "training" at the end of that phrase.

RESPONSE: The department agrees and will strike the words "continuing education" and will add the words, "approved education or training" to Rule VIII(3) and (4) (37.95.162) as suggested.

RULE IX (37.95.176) DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

COMMENT #37: There is some confusion between Rule IX(1) and (2) (37.95.176) pertaining to the use of the words "shall" and "may" when referring to negative licensing action and when it is to occur.

RESPONSE: The term "may" is discretionary, allowing the department to consider the circumstances when taking negative licensing action. The term "shall" is a mandatory word and does not allow the department discretion when taking negative licensing action. The term "must" is the same as "shall".

COMMENT #38: Please define the phrase, "any person staying in the facility on a regular or frequent basis" as the phrase is used in Rule IX(1)(a) (37.95.176).

RESPONSE: Webster's Dictionary defines "regular" and "frequent" as follows: "regular" means "recurring or functioning at fixed or uniform intervals". "Frequent" means "common, usual, happening at short intervals; habitual, persistent". Based upon these definitions, a person who does not work at the day care but has a persistent, habitual, or recurring presence in a licensed or registered day care facility must be subject to all criminal and protective service background checks.

COMMENT #39: In Rule IX(4) (37.95.176), the department should change the wording from "may" to "must" when indicating that parents will be notified when a provider is placed on a probationary or other provisional status.

RESPONSE: The department agrees. The department will modify the rule to require a reasonable notification of all the parents on the facility's master list. Notification will occur in a method chosen by the department if there is a change in the license status regarding probationary or other provisional licensure or registration status.

The department on its own initiative has added (5) to Rule IX (37.95.176) in order to be consistent with the requirements of 37-1-203, MCA, which prohibits the denial of a professional or occupational license based solely upon a criminal conviction, and Ulrich v. State of Montana Board of Funeral Service, 1998 MT 196, 289 Mont. 407, 961 P.2d 126, where the Montana Supreme Court has held that a licensee or a license applicant who has been convicted of a criminal offense that is related to the public health, safety, and welfare as applicable to the license must have the opportunity to show that he has been sufficiently rehabilitated so as to warrant the public trust. Rule IX(1)(a) through (d) and (2)(a) (37.95.176) identify specific criminal offenses which are related to the public health, safety, and welfare as applied to providing day care. An applicant, licensee, or registrant who faces proposed negative licensing action based upon a conviction must meet the burden of establishing by clear and convincing evidence at an administrative fair hearing that the convicted person has been sufficiently rehabilitated so as to warrant the public trust.

RULE X (37.95.623) DAY CARE FACILITIES: CHILD TO STAFF RATIOS

COMMENT #40: In Rule X(2) (37.95.623), the staff and child ratio proposed for school aged children is inappropriate.

RESPONSE: The department partially agrees, but it would not characterize the ratio as inappropriate. However, based on comments received regarding the department's proposed school aged child care regulations, the department will withdraw the proposed staff and child ratio for facilities providing care exclusively for school aged children by striking in its entirety Rule X(2) (37.95.623).

COMMENT #41: For Rule X(3) (37.95.623), please clarify that child care center directors are also included as staff who may count in the child and staff ratio.

RESPONSE: The department agrees. Directors can be included in the child-to-staff ratio. The department will amend Rule X(3) (37.95.623) to read "only the day care center director, primary care-givers and aides may be counted when determining the staff ratio".

RULE XI (37.95.155) DAY CARE FACILITIES: RECORDS

COMMENT #42: In Rule XI(1) (37.95.155), the department should specifically identify what policies, records, and reports must be maintained.

RESPONSE: The department disagrees. 52-2-732, MCA, provides that the licensee shall "keep and maintain such records as the department may prescribe, and [shall] permit inspection of these records". The required records are mentioned throughout the day care rules, and to specify them in Rule IX (37.95.155) would be duplicative.

COMMENT #43: Would providing the records to the department violate an individual's right to privacy?

RESPONSE: No. The department's access to these records does not violate a person's right to privacy. The department is authorized to review healthcare information while conducting its regulatory process. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), at 45 CFR 164.512(d)(1)(iii), and the Montana legal provisions of 52-2-723, MCA, and 50-16-530, MCA, give the department the authority to view any facility records as the department deems necessary for its health oversight activities. Under these laws, the department must maintain the confidentiality of these records, and it cannot release the records to any person or organization that operates outside of the department's regulatory process. This confidentiality requirement is in 50-16-603, MCA.

COMMENT #44: The department should limit its review of records to only enrolled children.

RESPONSE: The department disagrees. As is often the case when conducting facility investigations, there may be times when the department will need to review records of children who no longer attend the facility.

RULE XII (37.95.146) DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE

COMMENT #45: In Rule XII(3) (37.95.146), the department should add a timeline of ten days to notify the department of any facility changes.

RESPONSE: The department agrees and has made that change.

RULE XIII (37.95.153) DAY CARE FACILITIES: NOTICE OF CHANGES

COMMENT #46: In Rule XIII(1) (37.95.153), the department should further specify the types of facility changes that need to be reported.

RESPONSE: The department disagrees. The changes that must be reported to the department are those that affect the terms of the license or registration. The department believes Rule XIII (37.95.153) adequately explains the type of reportable changes.

RULE XVI (37.95.149) DAY CARE FACILITIES: STAFFING QUALIFICATIONS

COMMENT #47: The department received many comments concerning the inappropriateness of the department's proposal regarding qualifications for day care center directors found at Rule XVI(2) through (4)(b) (37.95.149). The department was requested, given the economic structure of Montana and the very limited employment pool, to withdraw this proposal and revisit the issue later. Concern was also raised about whether a staff person retains the years of experience if the person moves out-of-state and returns. Concerns were also raised regarding the directors who wished to remain in their current positions and earned their status through years of experience. Another comment concerned the rule's language being unclear.

RESPONSE: The department agrees with the comments. Rule XVI(2) through (4)(b) (37.95.149) as proposed will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620(1), which had been originally slated for repeal. The language in ARM 37.95.620(1) was placed in Rule XVI (37.95.149), while the remainder of ARM 37.95.620 is repealed.

COMMENT #48: Please define what "good moral character" means in Rule XVI(1)(d) (37.95.149).

RESPONSE: Please see response to Comment #19.

COMMENT #49: A comment supported the department's proposed language about onsite teaching directors in Rule XVI(2) (37.95.149).

RESPONSE: The department thanks the commentor for the support.

COMMENT #50: Three other comments did not support the proposed language as found in Rule XVI(2) (37.95.149), specifically the requirement of having an onsite director. The commentors believed the language requires a director to be on the premises at all times.

RESPONSE: The commentor's assessment of the word "onsite" is correct. However, given the comments concerning (2) as well as other concerns over Rule XVI(2) through (4)(b) (37.95.149), the proposed language will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47.

COMMENT #51: Will the department define what a "recognized preschool" is in Rule XVI(4)(a) (37.95.149)?

RESPONSE: See response to Comment #10. After consideration of the public comment concerning section (2) through (4)(b), the proposed language will be withdrawn. The department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47.

COMMENT #52: Rule XVI(5) (37.95.149) appears to indicate that the 15 hours of training for directors applies only to those newly employed as of the effective date of the rule.

RESPONSE: The department agrees and will change the language so that it is clear that the 15 hours of training applies to all child care center directors regardless of when they were hired. In Rule XVI(5) (37.95.149), the department will strike the words "newly" through "career path and" so that the rule will read: "A center director must obtain 15 hours of approved education or training on an annual basis".

COMMENT #53: In Rule XVI(5) (37.95.149), the department should increase the number of hours of training for directors from 15 hours to 20 hours.

RESPONSE: The department disagrees. Fifteen hours of training is incremental and reasonable at this time.

COMMENT #54: In Rule XVI (37.95.149), the department should require a training course on the administering of medication for all center directors.

RESPONSE: The department agrees that all directors who agree to dispense medications should participate in mandatory training concerning medication administration. However, the department is aware that this training is not yet available. The department has awarded a contract to Child Care Resources in

collaboration with the Missoula Public Health Department for the development of this training. While the training will be ready for implementation in October 2006, these rules will be in effect prior to that time. The department does not feel it can mandate training that has not been fully developed and implemented. The department may revisit the issue of making the training a requirement in rule once the training program is established.

COMMENT #55: In Rule XVI(5) (37.95.149), the department should consider removing the listed requirements on how to obtain a level 3 on the Montana Early Care and Education Path because there are a number of ways people can attain this level.

RESPONSE: After consideration of the public comment concerning Rule XVI(2) through (4)(b) (37.95.149), the proposed language change for director qualifications will be withdrawn and the department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47. Because of this change, the department does not feel that it can implement the requirement for directors to be at a level 3 on the Montana Early Care and Education Career Path.

COMMENT #56: In Rule XVI(2) through (4)(b) (37.95.149), the following language should be added: "All directors must have at least a current Child Development Specialist Apprenticeship credential with active status on the practitioner registry at Level 3 and must complete 15 hours of approved continuing education/training". This requirement should be applied to all new nonteaching directors.

RESPONSE: The department disagrees at this time. After considering the public comment, the department will withdraw Rule XVI(2) through (4)(b) (37.95.149), and the department will use the staffing qualifications presently found at ARM 37.95.620. See response to Comment #47. The department will consider the commentor's suggestion in the future.

COMMENT #57: In Rule XVI(5) (37.95.149), consider removing the reference of "two years" in Rule XVI(5)(e)(i) (37.95.149), and replace it with "4,000 hours". Also, consider replacing the existing language at Rule XVI(5) (37.95.149) with the following language for the qualification of primary care-givers:

- (ii) credential or Montana Child Development Specialist Apprenticeship Certificate (level 3 or 4 on the MT practitioner registry)
- (iii) an associate or bachelor's degree in early childhood education/child development (level 5 or 6 on the MT practitioner registry)
- (iv) an associate or bachelor's degree in education or social science with 20 semester credits in early childhood education/child development (level 5 or 6)
- (v) an associate or bachelor's degree in an unrelated field with 20 semester credits in early childhood education/child development (level 5).

RESPONSE: The department disagrees. The language concerning the requirements for primary care-givers in Rule XVI(5) (37.95.149) was only slightly changed and is appropriate at this time. The department may consider the

commentor's proposal at a future date.

COMMENT #58: In Rule XVI(8)(c) (37.95.149) the department should add the word "approved training" when referring to "continuing education".

RESPONSE: The department agrees and has made the change.

RULE XVII - DAY CARE FACILITIES: SCHOOL AGED CARE

COMMENT #59: The comments received regarding Rule XVII were the same as those for Rule X (37.95.623) regarding staff ratios. However, along with these comments, the department was asked to consider adding a mandatory training on the administration of medication for staff of school aged child care programs.

RESPONSE: After considering the public comment concerning the proposed rules for school aged care, the department will be withdrawing Rule XVII and other provisions concerning school aged care and will revisit them at a future date.

RULE XVIII (37.95.181) DAY CARE FACILITIES: MEDICATION ADMINISTRATION

COMMENT #60: Regarding Rule XVIII(1) (37.95.181), a facility's possible refusal to administer medications may affect children with disabilities. Would it be considered discrimination if the facility does not administer medications, and as a result refuses to enroll a child with a disability who needs medication? If so, what is the liability of the department?

RESPONSE: This question pertains to the Americans with Disabilities Act (ADA). The ADA is a civil rights law. The department has no authority or jurisdiction over ADA issues. Questions regarding ADA compliance should be reviewed by the provider's private legal counsel.

COMMENT #61: One comment was received in favor of the proposed language in Rule XVIII(1) (37.95.181) regarding medication administration.

RESPONSE: The department thanks the commentor.

COMMENT #62: Rule XVIII (37.95.181) should include language concerning the recently developed over-the-counter (OTC) checklist.

RESPONSE: While the department obviously agrees that an OTC checklist is helpful, the department does not feel it necessary to list those forms within the text of the rule. The department will make available forms and checklists pertaining to administration of medication, and will revise and update them as needed.

RULE XIX (37.95.182) DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION

COMMENT #63: One comment was received in support of Rule XIX (37.95.182).

RESPONSE: The department thanks the commentor.

COMMENT #64: In Rule XIX(1)(d) (37.95.182), the department should clarify what the term "dispose" means. In particular, if the provider gives the medication back to the parent, is the medication considered disposed?

RESPONSE: Yes. To "dispose" is to "get rid of". Giving the medication back to the parent would be an acceptable method of disposing the medication.

COMMENT #65: In Rule XIX(2) (37.95.182), the department should remove the words "use by" from this section.

RESPONSE: The department disagrees. The term "use by" specifies that the medication is there because the child needs it and it is "used by" a specific child.

COMMENT #66: In Rule XIX(3)(c) (37.95.182), do medications that must be refrigerated require storage in a separate refrigerator away from food?

RESPONSE: The reason for this rule is to avoid medication being confused with food. Medications can be stored in the same refrigerator as long as it is stored separately from the food. For example, the medication can be stored in a small locked box in the same refrigerator.

COMMENT #67: The department should specify that parents must indicate in writing when they last administered any medication.

RESPONSE: The department agrees. Because this issue pertains to the authorization and administration procedure, the department will add this requirement to its Authorization Consent form.

RULE XX - DAY CARE FACILITIES, SCHOOL AGED CARE: DIRECTOR AND STAFF QUALIFICATION

COMMENT #68: Comments were received regarding the department's proposed rules for qualification of directors and staff of school aged child care programs. All of these comments indicate that the department is being too restrictive in its provisions for the qualifications of directors and staff.

RESPONSE: After considering all of the comments, the department will withdraw Rule XX. The department will revisit this issue of requirement for school aged child care at a future date.

COMMENT #69: Please define the term "good moral character" in Rule XX(1)(d).

RESPONSE: Please see response to Comment #19.

COMMENT #70: Subjecting volunteers to background checks, as stated in Rule XX(2), is inappropriate and should not be required.

RESPONSE: See responses to Comments #26 and #68.

COMMENT #71: The department should eliminate the requirement in Rule XX(3)(c) that onsite directors be present at the facility at all times.

RESPONSE: See response to Comment #68.

RULE XXV (37.95.172) DAY CARE FACILITIES: SUPERVISION AT ALL TIMES

COMMENT #72: To comply with Rule XXV(1) (37.95.172), does a staff person have to be physically present at all times in the same room where the children are sleeping? Would there be adequate supervision if the sleeping room had a window for staff viewing?

RESPONSE: Even though the children are sleeping, appropriate staffing levels must be met. In order to provide supervision or be able to rescue a child in the event of an emergency, an adult staff member must be able to see or hear the children. Viewing windows may be appropriate depending on the number of children in the sleeping room, whether staff are physically near the room, and whether other staff are available to assist in cases of emergencies.

RULE XXVII (37.95.184) DAY CARE FACILITIES: HEALTH HABITS

COMMENT #73: The requirement in Rule XXVII(1)(a) (37.95.184) providing that children must wash their hands upon arrival at the child care facility should be stricken due to the difficulty of implementing it.

RESPONSE: The department agrees and will strike the words "upon arriving at the facility" in Rule XXVII(1)(a) (37.95.184).

RULE XXVIII (37.95.183) DAY CARE FACILITIES: FIRST AID REQUIREMENTS

COMMENT #74: In Rule XXVIII(1) (37.95.183), "American Red Cross" should be capitalized.

RESPONSE: The department agrees and will make this change.

COMMENT #75: Please clarify if the department is requiring syrup of ipecac or activated charcoal for first aid kits in Rule XXVIII(2)(a) (37.95.183).

RESPONSE: The department is requiring that first aid kits contain an unexpired bottle of syrup of ipecac. There has been much controversy regarding syrup of

ippecac. The American Academy of Pediatrics publicly denounced the use of ippecac in home first aid kits. However, in discussing the issue with Regional Poison Control Center in Denver, first aid kits should contain ippecac because of Montana's rural nature and potential for long transport times. However, the substance may only be administered under medical direction or by instruction of the regional poison control center. Activated charcoal is no longer recommended by the American Academy of Pediatrics or the Regional Poison Control Center for use by nonmedical professionals and is no longer required to be in the first aid kit.

COMMENT #76: What is meant by "sterile, absorbent bandages" in Rule XXVIII(2)(b) (37.95.183)?

RESPONSE: The department believes the terminology is self-explanatory. All first aid kits must contain bandages which are sterile and are absorbent. Over-the-counter products are clearly labeled accordingly.

COMMENT #77: Is the phone number listed in Rule XXVIII(2)(f) (37.95.183) the correct number for the poison control center?

RESPONSE: The department has verified that the number published is correct.

COMMENT #78: Define the term "hazard" as it is used in Rule XXVIII(2)(i).

RESPONSE: "Hazard" is defined in Webster's Dictionary as: "a source of danger". Rule XXVIII (37.95.183) requires a day care provider to notify the department anytime there is a "source of danger" that would affect the health, welfare, or safety of children in care.

In examining this rule, and taking the comment into consideration, the department feels there is a need to further clarify the rule. The department will add "each day care provider is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care".

COMMENT #79: Does Rule XXVIII(4) (37.95.183) mean that every time a parent chooses to take a child to the physician for treatment, it must be reported by the facility?

RESPONSE: Department notification is only required when a child sustains an injury while at the child care facility. If the injury is so serious that medical transport is necessary, or if the parent chooses to have the injury examined by a doctor, then the instance must be reported to the department.

COMMENT #80: Why is Rule XXVIII(5) (37.95.183) being added?

RESPONSE: This is not new rule language. The language is existing rule language from ARM 37.95.139(15) that has been moved to Rule XXVIII (37.95.183) to make it

easier for providers to locate.

37.95.102 DEFINITIONS

COMMENT #81: Please clarify the term "remote means of egress" in ARM 37.95.102(43).

RESPONSE: The department thinks the definition is adequate. The purpose of having a "remote means of egress" is to help prevent the possibility that the two required exits would both be blocked by a fire. To calculate whether the two required exits are remote, measure the room under consideration diagonally and divide that measurement in half. If the measured distance between the exits is less than 1/2 of the diagonal distance of the room, the exits are not considered to be remote. The second exit door or egress window would not be counted as the acceptable second means of exit.

COMMENT #82: Please clarify the term "restricted certificates" in ARM 37.95.102(45).

RESPONSE: A restricted certificate is a license or registration status that is given when a day care provider is unable to meet certain criteria, but is complying with an agreed-upon plan of correction. For example, a provider may be prohibited from caring for infants until a course of training is approved. The department in this case would issue a licensing/registration restriction to prevent the provider from caring for children under the age of 2 until that training and other corrective actions are completed.

37.95.102 DEFINITIONS

The department on its own initiative removed the definitions of "school age child care facility" and "teaching director" in ARM 37.95.102 based on comments received on other rules pertaining to school aged child care.

37.95.106 DAY CARE FACILITIES, REGISTRATION, OR LICENSING

COMMENT #83: Do the requirements of ARM 37.95.106(3) apply to day care centers only?

RESPONSE: Yes. A license is only granted to day care centers. ARM 37.95.106(4) contains the criteria for the issuance of a registration.

COMMENT #84: Add the following language to ARM 37.95.106(3)(h): "a list of current staff, role type with legal name, residential mailing address, residential phone number and age".

RESPONSE: The department agrees and will add the phrase "a list of each current staff person's legal name, position, age, residential and mailing addresses, and

telephone numbers" to ARM 37.95.106(3)(h). The information requested is critical to the timely and proper processing of information on provider training. The suggested language is more specific and will be beneficial for the Montana State University's Early Childhood Project for purposes of the training registry.

ARM 37.95.108 DAY CARE FACILITIES REGISTRATION AND LICENSING PROCEDURES

COMMENT #85: For ARM 37.95.107(7)(a), please reconsider the requirement that a three year license be granted only upon verification that no deficiencies exist. The department should allow three year licenses to be granted for minor deficiencies.

RESPONSE: The criteria established for issuing a three year license are clearly specified in 52-2-721(5), MCA. The department may only issue a three year license when a provider has no deficiencies. The department cannot change a statute by a rule.

ARM 37.95.121 SAFETY REQUIREMENTS

COMMENT #86: In ARM 37.95.121(7), please clarify what "unguarded" means, and discuss why this change has occurred.

RESPONSE: This is not new proposed language and is not one of the rules being proposed for change. However, the department will clarify what "unguarded" means. On certain slides there are ladders which are totally open with nothing but the actual step pieces of the ladder for children to hang on to. The intent of this rule is that the ladder leading to the top of the slide must have safety guards on each side of the step, or protective enclosures to allow children to hang on to while climbing up to the top of the slide.

COMMENT #87: The department should change the word "eloping" to "escaping" in ARM 37.95.121(13)(b).

RESPONSE: The department agrees and will change the word as requested.

COMMENT #88: In ARM 37.95.121, can both front and rear entrances of a facility have doors equipped with locks so that a person can always exit from the inside while the doors are locked to the outside? Can a bell system be used to gain access from the outside of the building?

RESPONSE: Any door which is locked must be able to open from the inside to allow exit. Locking devices cannot be used to prevent the department, other appropriate agencies, or parents from coming into the facility without the prior knowledge of the provider. The department is unsure how to answer the question concerning whether a bell system could be used because it is not sure what the system entails. The bottom line is that no locking device can prohibit exit from the inside, nor can it prevent unannounced access by authorized persons including

parents. How that is accomplished can vary by facility.

COMMENT #89: ARM 37.95.121(13)(e) does not adequately address "unannounced access".

RESPONSE: The department disagrees. The intent of this proposed language is to allow day care providers to use locking devices for self protection and for the protection of children in care. Locking devices cannot be used to prevent the department, other appropriate agencies, or parents from coming into the facility without the prior knowledge of the provider. How that is accomplished can vary by facility.

ARM 37.95.132 TRANSPORTATION

COMMENT #90: Regarding ARM 37.95.132, the Department of Transportation has outlawed the use of 15-seat passenger vans for the transportation of children.

RESPONSE: The commentor did not specify whether the restriction was due to state or federal Department of Transportation law. The department is not aware of the ban and will do further research. The department shares jurisdiction with many other authorities, and it does not need to change the rule if a transportation agency does not permit 15-seat vans to be used for transporting children. The department may make rule changes in the future depending on what the department learns.

COMMENT #91: In ARM 37.95.132(2)(a), the requirement that bus drivers for school aged child care programs be certified in CPR/First Aid is restrictive.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. See response to Comment #68. The provision in (2)(a) will be removed. (2)(b) has been renumbered as (5).

COMMENT #92: The requirements of ARM 37.95.132(2)(b) and (7) are the same. There is no need to repeat the language.

RESPONSE: The department disagrees. ARM 37.95.132(2)(b) applies specifically to facilities that are transporting children under the age of 4, while (7) applies to all children regardless of age. The specifications in (2)(b), now (5), are made because according to the National Highways Safety Administration, children under age 4 must be transported in vehicles that support the inclusion of proper safety restraints. Vehicles such as buses cannot be fitted for use of car seats or booster seats. As such, a bus cannot be used to transport children under 4 years of age. Additionally, some older vans are being used but cannot be retrofitted for proper safety restraints. (2)(b), now (5), specifically addresses these types of instances. (7) is a general rule applicable for transporting all children.

COMMENT #93: The department is requested to strike all rule language in ARM 37.95.132(7) and consider developing and using the requirements as a policy rather

than a rule.

RESPONSE: The department disagrees. The department feels it is necessary to have the requirements in the form of a rule so that the program may exercise enforcement as necessary and appropriate.

COMMENT #94: The department should amend the language in ARM 37.95.132(7) to reflect requirements for transporting children under 60 pounds by bus, rather than requiring all vehicles to be equipped with car seats or boosters.

RESPONSE: The department disagrees. This requirement already exists in the state's motor vehicle law in 61-9-420, MCA. In order for the department to adequately comply with existing state law, the language must be updated to be reflected in the administrative rules.

COMMENT #95: Implementing ARM 37.95.132(7)(a) will cause a hardship for school-aged child care programs.

RESPONSE: The department disagrees. This is not new rule language, with the exception of the word "recommendation" replacing "standard". Existing programs have already been following this guideline. The national standards for transportation of children address transportation and restraint issues involving all ages of children, including school aged ones.

ARM 37.95.139 DAY CARE FACILITIES: HEALTH CARE REQUIREMENTS

COMMENT #96: In ARM 37.95.139(3)(c)(v), the department's expectation that children must be on an antibiotic for 24 hours before they can return to the day care is unreasonable if a child only has an infected hangnail.

RESPONSE: ARM 37.95.139(3)(c)(v) was not a rule open to proposed changes within this rule notice. The department will reexamine this particular reference. Any proposed changes to this subsection may be made in a future rule notice.

COMMENT #97: Will the department clarify the term "communicable disease" in ARM 37.95.139(4)(c)?

RESPONSE: There are many diseases that are considered communicable. "Communicable disease" is defined as any disease transmitted from one person or animal to another. The types of disease agents include viruses, bacteria, fungi, and parasites. Communicable diseases are those conditions also known as contagious diseases and include the influenza virus, chicken pox, and measles, among others. Rules concerning communicable disease reporting and prevention are found at ARM Title 37, Chapter 114.

ARM 37.95.140 IMMUNIZATION

COMMENT #98: In ARM 37.95.140(1), the department should consider exempting immunizations for children in school aged child care programs as the state does for schools, such as allowing for religious exemptions, for the children of the same age.

RESPONSE: State law found at 52-2-735, MCA, does not permit the department to consider religious exemptions from immunizations in child care settings. The HIB vaccine is the only exception allowed for child care facilities. The department is withdrawing all proposed rules regarding school aged child care, so the comment no longer applies.

COMMENT #99: The department should exclude the requirement for the varicella (chicken pox) vaccine in ARM 37.95.140(1).

RESPONSE: The department disagrees. The Advisory Council on Immunization Practices has recommended this immunization for all children. Each year in the United States, an average of 11,000 people were hospitalized and up to 100 people died from complications of chicken pox before the vaccine became available. Chicken pox is easily spread through the air by sneezing and coughing, and anyone can be infected just by being in the same room with someone who has the disease. Child care facilities are ideal environments for this disease to migrate.

Having requirements for this vaccination helps to achieve protection not only in day care settings but in school and other community environments as well, which results in less illness and school/day care time missed by healthy children, and less danger of infecting children who cannot be vaccinated. Persons who are not able to receive chicken pox vaccine include children with leukemia and other cancers, persons taking high doses of steroid medication for such things as asthma, pregnant women, and infants less than one year of age -- all of whom are likely to attend, work at or frequent a child care environment. These people have a higher risk of developing complications from chicken pox should they contract it. The only way to protect them is to achieve high levels of vaccination coverage among other people in the community so that those who cannot have the vaccine are less likely to come in contact with a person with chicken pox.

COMMENT #100: In ARM 37.95.140(4), why did the department change the existing rule to reflect DTaP requirements for 5 through 12 year olds?

RESPONSE: The immunization schedule outlined in ARM 37.95.140(1) only addresses the immunizations necessary for children up to 19 months. The new language in (4) was added in an attempt to specify those vaccines needed for children who are ages 5 through 12 and who attend child care facilities.

ARM 37.95.215 NUTRITION

COMMENT #101: The requirement in ARM 37.95.215(3)(b) for a dietitian to annually review day care center menus for programs that do not participate in the child care food program is excessive and can be very expensive.

RESPONSE: The department disagrees. The dietician review of menus for nutritional assessment has been required for quite some time. Also, this rule was not proposed for any changes. The department is not able to make any amendments at this time under the Montana Administrative Procedure Act (MAPA) process.

ARM 37.95.225 WATER SYSTEMS

COMMENT #102: Is ARM 37.95.215 necessary? The department should strike it in its entirety.

RESPONSE: The department disagrees. Assuring a safe water supply system is critical to the health and safety of children in care as well as those adults who utilize the water from a nonmunicipal system. The changes update the language and make it easier for providers to understand the testing requirements for wells.

ARM 37.95.602 DAY CARE CENTERS, PROGRAM REQUIREMENTS

COMMENT #103: The department should change the words "age appropriate" to "developmentally appropriate" in ARM 37.95.602(1)(a)(iii).

RESPONSE: The department agrees and will make that change.

COMMENT #104: The department should remove the interlined language regarding "assisting in planning activities" in ARM 37.95.602(1)(a)(iii).

RESPONSE: The department disagrees. It is developmentally appropriate to have children participate in the planning of activities involving themselves. This fosters self confidence and ownership, is easily accomplished, and allows the children to be part of something greater than themselves.

COMMENT #105: The current regulations proposed in ARM 37.95.602(1)(b) for school aged child care programs are insufficient based upon the trends and needs of school aged children.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. This provision will also be removed. (1)(a) will be changed to (2), and the remaining sections will be renumbered accordingly.

ARM 37.95.610 DAY CARE CENTERS, SPACE

COMMENT #106: In ARM 37.95.610(3), the department's requirement for 35 square feet of space per designated activity area will eliminate large group activities such as assemblies or group movies.

RESPONSE: The department agrees. The department will amend (3) to read as

follows: "When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child must be provided, except for:

- (a) periods when children are using their sleep equipment; or
- (b) when large group activities, such as educational assemblies, occur.
- (4) During sleep periods, the area must be sufficient to provide spacing between children using sleep equipment."

COMMENT #107: In ARM 37.95.610(3), can the department define the term "sufficient" concerning spacing between children and sleep equipment when children are sleeping?

RESPONSE: Yes. The department intended to allow exceptions for the 35 square feet per child per activity area for those times when children are napping. For example, a room which might only accommodate 15 children during activity time could accommodate 20 children for purposes of napping as long as the equipment and the space does not cause over-crowding for the children. There must be room between each child for a child or an adult to be able to walk by and enough room for children to exit the room in a safe manner should evacuation be necessary.

ARM 37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

COMMENT #108: To comply with ARM 37.95.611(3)(b), can the designated office area be used as a rest area so that staff who choose to not leave the building can have a break?

RESPONSE: Yes.

COMMENT #109: Regarding ARM 37.95.611(3)(c), a commentor was concerned about the accessibility of service vehicles and the impact of that upon school aged child care programs.

RESPONSE: The department is withdrawing all proposed rules regarding school aged child care. This provision will also be removed.

ARM 37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

COMMENT #110: The department should consider the impact that this rule imposes upon school aged child care programs. This provision should be excluded.

RESPONSE: The department is withdrawing all proposed rules and relevant rule sections in other rules in this notice regarding school aged child care. Consequently the provision on school aged child care has been removed.

COMMENT #111: ARM 37.95.613(3) and (4) should be exempted for all school aged child care programs.

RESPONSE: The department is withdrawing all proposed rules regarding school

aged child care. These provisions will be removed.

ARM 37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS

COMMENT #112: ARM 37.95.705(1) contains areas of exclusion when determining countable space. The department is implementing this section in a restrictive way and it should be dropped.

RESPONSE: The department disagrees. This rule has previously defined areas that are not counted in useable square footage calculations. The previous language was vague and left much to the interpretation of the providers and the department. The department's intent is to clarify countable areas. The language identifies areas not to be included by clarifying noncountable space areas. The areas defined as not usable in this rule are areas that no child should regularly be in for day care activities.

COMMENT #113: Does ARM 37.95.705(4)(a) affect existing facilities, and if an existing facility is sold, will the new rule language apply to that facility?

RESPONSE: The requirement will only apply to facilities licensed on or after the effective date of the rules. The rule will affect those programs whose ownership changes after the rule adoption date.

ARM 37.95.706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS

COMMENT #114: In ARM 37.95.706(2), the department should eliminate the requirement that fire extinguishers be mounted. Locating the extinguisher by the outside door is sufficient.

RESPONSE: The department disagrees. The importance of mounting the extinguisher in a familiar location is a basic life safety issue. When responding to a fire, a trained facility staff or fire specialist/rescue person does not have time to look around and find the extinguisher. Mounting the device in a familiar and consistent place off the floor will assist anyone in locating the extinguisher and prevent someone from accidentally moving it.

ARM 37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING

COMMENT #115: The department received one favorable comment supporting all the proposed changes in ARM 37.95.1005.

RESPONSE: The department thanks the commentor.

COMMENT #116: In ARM 37.95.1005(2), please clarify the issues surrounding sleep positions when an infant rolls onto his belly during sleep time.

RESPONSE: According to the National SIDS Resource Center and the Back to Sleep Campaign, the supine (back) position presents the least risk of SIDS. Once infants develop the motor skills to move from their back to their side or stomach, it is safe to lay them on their backs and allow them to adapt to whatever position makes them comfortable. A parent must present a physician's note to the provider if a child cannot sleep on his back due to medical reasons.

COMMENT #117: Regarding ARM 37.95.1005(3)(a), if a parent gave permission, would the department allow a child to sleep in a swing or a car seat?

RESPONSE: No. If there is a medical reason that the child should be sleeping in a swing or car seat, proper medical documentation must be on file. Usually, if a physician recommended such a sleep practice, it would only be for a specific period of time, not on a regular basis. According to the American Academy of Pediatrics, the National SIDS Resource Center and the American Public Health Association, infants that are allowed to sleep routinely in swings and car seats are at a higher risk of SIDS. Children do fall asleep in these apparatuses, but they should be moved to an appropriate sleeping surface such as a crib.

COMMENT #118: The department should reconsider its prohibition on the use of stackable cribs as specified in ARM 37.95.1005(5). Many programs have built their infant areas based upon the knowledge they can have stackable cribs. The proposed prohibition will cause a significant economic impact as well as potentially eliminating any infant care within their facilities.

RESPONSE: The department partially agrees. The department feels that stackable cribs pose safety hazards in certain circumstances. However, the department acknowledges the potential financial impact to programs that have designed their programs around the use of stackable cribs. The department will add to ARM 37.95.1005(5) the following words: "Use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first". The department feels the original safety risk concerns can be reduced with the addition of the amended language.

COMMENT #119: Please clarify what types of blankets are acceptable in ARM 37.95.1005(6).

RESPONSE: If a blanket is to be used, the American Academy of Pediatrics and the National SIDS Resource Center recommend the use of lightweight fabric blankets. This position is supported by the department.

COMMENT #120: The commentor feels that the statement in ARM 37.95.1005(8) is incomplete.

RESPONSE: The department disagrees. The statement is written as intended. The provider must investigate all cries of infants to determine the reasons for the

crying.

/s/ Russ Cater
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State May 22, 2006.